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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR Single Bench

Civil Revision No.....09..... of 2008

Petitioners
Defendants : 1. Ramkumar gaed 34 years s/o Yadav Prasad,

2. Shyam Lal aged 49 years s/o YadavPrasad,

Both by caste Sahu resident of village Badesipat Tahsil Malkharoda District Janjgir-Champa C.G. at present residing at village Jamanipali Jailgaon Chowk, Ajodhyapuri Tahsil & Dist. Korba C.G.

VERSUS

Respondent
Plaintiff : Kartik Ram aged 55 years s/o Runu Ram Dewangan resident of Sakti Ward No. 6, Police Station & Tahsil Sakti Dist. Janjgir-Champa CG.

REVISION PETITION UNDER SECTION 115 OF THE CIVIL PRO.CODE.

(24)

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

CIVIL REVISION NO. 9/2004

Ramkumar S/o. Yadav Prasad
aged 34 years and another.
Vs.
Kartik Ram S/o. Runu Ram Dewangan
aged 55 years, Resident of Sakti Ward No.6,
Police Station & Tahsil Sakti Dist.Janjgir-Champa, CG.

O R D E R

Post for: 10th-03-2004

Sd/-
L.C.BHADOO
Judge

9th-03-2004

(25)

HIGH COURT OF CHHATTISGARH, BILASPUR

CIVIL REVISION NO. 9/2004

Ramkumar S/o. Yadav Prasad
aged 34 years and another.
Vs.
Kartik Ram S/o. Runu Ram Dewangan
aged 55 years, Resident of Sakti Ward No.6,
Police Station & Tahsil Sakti Dist.Janjgir-Champa, CG.

Present:

Shri H.B. Agarwal, counsel for petitioners.

ORDER

(Passed on 10th March, 2004)

As per L.C. Bhadoo, J.

Petitioners/defendants have preferred this civil revision under Section 115 of the Code of Civil Procedure being aggrieved by the order dated 16/12/2003 passed by the learned Additional Sessions Judge, Sakti, District Bilaspur/Janjgir-Champa in Civil Suit No.4-B/2003 whereby the learned Additional District Judge has rejected the application of the petitioners filed under Order 7 Rule 11 of the C.P.C and under Section 22 of the Specific Relief Act, 1963.

2. The brief facts giving rise to filing of this civil revision are that the respondent herein filed a civil suit against the petitioners herein for recovery of Rs.92,237/-with the averments that the respondent is residing in the house of petitioner no.1 on a monthly rent basis of which the respondent no.1 is the owner. The house in question is situated in ward no.6 of the Town Sakti, District. Janjgir-Champa.

(26)

3. On 15/05/2000 the petitioner no.1 herein entered into an agreement to sell of his house for consideration of Rs.3,00,000/-. The petitioner no.1/defendant no.1 purchased the clothes and took cash to the tune of Rs.58,500/- at the time of the marriage for which the petitioner no.1 assured that it will be adjusted against the sale price of the house. Further after taking Rs.20,000/- as advance money he executed an agreement in presence of two witnesses on 15/05/2000 which was executed with the consent of petitioner no.2, as the petitioners no. 1 and 2 are the brothers and they are residing together. The petitioners/defendants assured the respondent herein that they will execute the sale deed on 30/07/2000 after taking the remaining money. The respondent herein asked the petitioners no. 1 and 2 to take the remaining money of Rs.2,21,500/- and to execute the sale deed in his favour, but the petitioners neither took the money nor executed the sale deed in his favour and they started avoiding the execution of the sale deed. The respondent herein was always ready and willing to perform his part of the agreement but the petitioners were not prepared to abide the terms and conditions of agreement to execute the sale deed. Therefore, when the sale deed was not executed the agreement became unsuccessful, and further the petitioner no.1 filed a suit for eviction and possession against the respondent which is pending in the Court of Civil Judge, Ist Class, Sakti. As there were no chances of execution of sale deed by the petitioners, therefore, the respondent herein was not left with any option but to file a civil suit for recovery of the original amount of Rs.78,500/- and the interest at the rate of 6% from 15/05/2000 to 15/04/2003 and the total amount due against the petitioners herein became Rs.92,237/-. In the column of cause of action of the plaint it is mentioned that the cause of action arose on 15/05/2000. The petitioners herein filed an

(27)

application under Order 7, Rule 11 of the C. P. C mentioning therein that the plaintiff has not filed any suit for specific performance, therefore, the suit of the plaintiff is premature and the suit is barred by the law and the said document of agreement to sale is forged and without any consideration, therefore, the suit be rejected.

4. I have heard the learned counsel for the petitioners.

5 In this connection, Order 7, Rule 11 of the Code of Civil Procedure and also Section 22 of the Specific Relief Act, 1963 are relevant which are reproduced as under:

> "Order 7 Rule 11 Rejection of plaint:- the plaint shall be rejected in the following cases:
>
> a) where it does not disclose a cause of action
>
> b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so,
>
> c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
>
> d) where the suit appears from the statement in the plaint to be barred by any law;
>
> e) where it is not filed in duplicate;
>
> f) where the plaintiff fails to comply with the provisions of rule 9:]
>
> [Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave

(28)

injustice to the plaintiff.]".

" Section 22. Power to grant relief for possession, partition, refund of earnest money etc.- (1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property, may, in an appropriate case, ask for-

a) possession, or partition and separate possession, of the property, in addition to such performance; or

b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or (made by) him, in case his claim for specific performance is refused.

2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the Court unless it has been specifically claimed'

Provided that where the plaintiff has not claimed any such relief in the plaint, the Court shall at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

3) The power of the Court to grant relief under clause (b) of sub-section(1) shall be without prejudice to its powers to award compensation under Section 21."

6 As far as the rejection of plaint under Order 7 Rule 11 (a) (d) of the Code of Civil Procedure is concerned, it can be rejected only when the suit does not disclose a cause of action or where the suit appears from the statement in the plaint to be barred by any law.

7. In the light of the above, sub-rule (a) and (d) of Rule 11 of Order 7 of the C.P.C., if we examine the plaint filed by the respondent herein it has been clearly mentioned that the defendants after agreeing to sell their house for consideration of Rs.3,00,000/-, executed a document in his favour on 15/05/2000 after taking Rs.20,000/- cash in advance and also giving assurance that earlier amount of purchase

(29)

of clothes and cash taken at the time of marriage, total Rs.58,500/- will be adjusted. It has been mentioned in the plaint that since the petitioners herein refused to execute the sale deed, the plaintiff is filing suit for recovery of the amount, which is due against the defendants. If we look into the document which is said to be executed as an agreement to sale it has been specifically mentioned in the document that the petitioners herein took Rs.20,000/- as advance for consideration of sale and he also agreed that to adjust Rs.58,500/- which was due against the petitioner no.1 on account of purchasing the clothes and taking cash money at the time of marriage. Moreover, the perusal of this document the agreement receipt reveals that it has no where been mentioned that if the respondent herein will fail to perform his part of duty for execution of the sale deed after paying the remaining amount, the petitioners herein will be entitled for forfeiture of the advance money given to petitioner no.1. Therefore, it cannot be said that the plaint filed by respondent herein does not disclose cause of action for filing of the suit and it has been mentioned in the plaint itself that the respondent herein contacted the petitioners for execution of the sale deed and he was always ready and willing to pay the remaining amount for execution of sale deed, but petitioners avoided and they are not refunding the money advanced to the petitioners. Therefore, the point raised by the petitioners that the filing of the plaint does not disclose cause of action is without any merit.

7. Now coming to second argument that without filing the suit for specific performance by the respondent herein he is not entitled for recovery of the amount as per the provisions of Section 22 of the Specific Relief Act.

(30)

8. If we look into the provisions of Section 22 of the Specific Relief Act, 1963 which lays down that any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for- (a) possession, or partition and separate possession, of the property, ion addition to such performance; or (b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or (made by) him, in case his claim for specific performance is refused.

9. A bare perusal of the above Section does not debar the respondent herein from filing the suit for recovery of the amount only which was paid by him as earnest money and other amount which was due against the petitionerno.1 on account of purchase of clothes and taken as cash at the time of marriage. As has been mentioned above, there is no clause in the agreement itself that in case the respondent will fail to perform on his part, he will not be entitled for recovery of the amount. Therefore, the argument of the learned counsel for the petitioners that in view of Section 22 of the Specific Performance Act, 1963, the suit does not lie is without force and devoid of any merit.

10. In the result, I do not find any perversity or illegality in the impugned order passed by the Additional District Judge, therefore, the revision is liable to be dismissed and it is dismissed.

Sd/-
L.C.BHADOO
Judge

10/03/2004

Raju